

General Information Letter: Sale of more than half of the real property used in a business will trigger the bulk sale reporting requirement.

November 1, 2005

Dear:

This is in response to your letter dated October 17, 2005, in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

Our firm represents COMPANY, LLC, an Illinois limited liability company, the seller of approximately 20.137 acres of real estate located in CITY, Illinois.

The Buyer in this transaction requires that our client produce evidence that the sale is exempt from the Illinois Income Tax Withholding Act (Chapter 20, Section 9-902(d)) (sic).

The relevant facts regarding this transaction are as follows:

The Seller is the owner of the real estate, including the property being sold and several parcels of land surrounding the property being sold. The 20.137 acre parcel being sold has been improved with an office/industrial building. The Seller is retaining title to two neighboring parcels, consisting of approximately 5 acres. The Seller does not operate any business on any of the parcels, nor does the Seller lease any of the parcels to any other person or entity. The Seller is a real estate developer, and plans to develop the neighboring parcels, as it has done with the property being sold. As Section 9-902(d) applies to sales or transfers 'outside the usual course of business,' we believe that this transaction is exempt from the provisions of Section 9-902(d).

Please issue a ruling exempting our client, COMPANY, LLC, from the provisions of Ill. Rev. Stat. Chapter 120, Section 9-902(d) (sic). Please also provide a determination that the Buyer is likewise not subject to the provisions of said Act.

Section 902(d) of the Illinois Income Tax Act (the "ITA," 35 ILCS 5/101 et seq.) provides in pertinent part:

If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department disclosing the name and address of the seller or transferor, the name and address of the purchaser or transferee, the date of the sale or transfer, a copy of the sales contract and financing agreements which shall include a description of the property sold or transferred, the amount of the purchase price or a statement of other consideration for the sale or transfer, and the terms for payment of the purchase price, and such other information as the Department may reasonably require.

In the situation described in your letter, if the real estate being sold comprises a major portion of the real estate used in the Seller's real estate development business, and the sale was "outside the usual course of [the] business," Section 902(d) of the IITA would require the purchaser to report the transaction to the Bulk Sales Section. The Department has no authority to waive the statutory requirement. From your letter, it would appear that the real estate being sold is the major part of the real property of your client's development business. Without some evidence that this sale is being made in the "usual course of its business," this sale is subject to the notification requirements. We cannot render an opinion based solely on your assertion.

As stated above, this is a GIL that does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax